

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

APPEARANCES: For the applicant
Jack Shultz, Attorney
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Lincoln, Nebraska

OPINION AND FINDINGS

By its application filed November 5, 1986, Ideal-Z-Tel, Inc., Everett, Washington, seeks authority to provide interLATA and intraLATA telecommunications services in the State of Nebraska.

Pursuant to notice required by law, public hearing was held on the application on January 15, 1987, at 9:30 a.m. in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. The hearing was held on a consolidated record with Application No. C-692 which will be the subject of a separate order.

1. Ideal-Z-Tel, Inc. is a Washington corporation with its principal place of business in Everett, Washington. It was formed to provide a corporate telecommunications network for Ideal Products distributors and dealers throughout the United States.

2. Ideal Products, Inc. is a Washington corporation engaged in the marketing of products dealing with health food, family, household and cleaning products. Both Ideal-Z-Tel and Ideal Products have common ownership.

3. Ideal-Z-Tel has been authorized to provide intrastate telecommunications services in the states of Washington, Delaware, Utah, Nevada and Georgia. It is presently providing interstate telecommunications service to some Nebraska subscribers but suspended soliciting new subscribers pending a decision on this application.

4. The protest of The Lincoln Telephone and Telegraph Company (LT&T) and the intervention of Nebraska Telephone Association (NTA) were concerned with the intraLATA authority sought by the applicant.

5. Fred Thompson, President of Ideal-Z-Tel testified for the applicant. Mr. Thompson was employed by the Bell System for 22 years in a variety of functions and positions, primarily in the engineering field. He later owned an engineering firm dealing with communications technology until assuming his present position on January 1st.

6. Applicant proposes to offer two types of service: Z-Tel I, which is a flat rate unlimited calling service for \$120 and Z-Tel II, which provides 250 minutes for \$100 and additional blocks of 400 minutes at \$100 each. The evidence indicates that the Z-Tel I service does not meet the Commission's service standards in that 10% of the calls offered encounter an all trunks busy condition, whereas the Commission's Rules and Regulations specify no more than 1%. The evidence shows that Z-Tel II does meet the Commission's Rules and Regulations. We must, therefore, find that applicant may not offer its Z-Tel I service on an intrastate basis. Applicant should be required to notify its customers that Z-Tel I service is not available for intrastate calling in Nebraska. Because of its marketing method, applicant should also be responsible for insuring that its dealers notify customers.

7. Applicant is financially qualified through its association with Ideal Products and technically qualified to offer the service proposed.

8. Pursuant to stipulation of the parties, testimony of Dennis Johnson, Thomas Zepp and Alan Pearce given at a September 17-18, 1986 hearing in Applications C-660, C-661 and C-670 was introduced in evidence at this hearing. Each of these witnesses testified on the question of adequacy of intraLATA interexchange telecommunications service; witnesses Johnson and Zepp testifying for the applicants and witness Pearce for NTA.

9. Witness Johnson, a professor of economics at the University of South Dakota, testified that competitive markets are desirable because they produce that combination of goods and services which the consumer most desires; because those goods and services are produced at least cost; and because technological innovation is encouraged. He also testified that all consumers, including those in so-called nontargeted markets, benefit from

competition because the economic efficiency promoted by a policy of competition permeates the fabric of the business environment. He testified that LATA boundaries are, from an economic perspective, arbitrary and intraLATA markets should not be treated differently, from a policy standpoint, than interLATA markets. He stated that, since it is both technologically and economically feasible for interLATA telecommunications companies to provide intraLATA interexchange service in Nebraska, the maintenance of constraints on either actual or potential competition in the intraLATA market renders the level of service in that market inadequate.

10. Witness Zepp, former senior economist for the Oregon Public Service Commission testified that competition among providers of interexchange intraLATA telecommunications services will benefit the public by making services more responsive to the subscribers' needs; by reducing the price at which these services are offered; and by making available a wider variety of new, higher quality services. He also testified that eliminating the distinctions between intraLATA and interLATA services will make things simpler for the consumer and will lead to the development of tariffs which are easier for people to understand. He expressed the opinion that adequate telecommunications service is that which allows the consumer a choice, where such choice is feasible and that, without competition, service is and will remain inadequate within the meaning of Section 75-604 of the Nebraska statutes.

11. Witness Pearce, former chief economist for the Federal Communications Commission, testified that the economic model, i.e. that of a competitive marketplace, relied upon by MCI's and AT&T's witnesses is supported by reputable economists and is part of the philosophical underpinning of the United States. He also pointed out that other countries, such as Sweden and Japan, utilize different models in which regulation and monopoly are substituted for competition. He urged the Commission to carefully weigh the arguments for and against intraLATA interexchange competition and to examine the policies being developed by the FCC and other state regulatory bodies.

12. Frank Hilsabeck, Executive Vice President of LT&T testified. LT&T opposes the granting of the application insofar as its 22-county service territory is concerned. Mr. Hilsabeck testified that LT&T presently offers intraLATA interexchange service within its service territory and also testified as to the technical adequacy of its service.

13. Since August of 1985 the Commission has authorized competition among interexchange carriers where services cross LATA boundaries. On August 5, 1985, in Applications C-497 and C-552, Sprint and MCI were authorized to compete with AT&T, which had theretofore been the sole authorized provider of interLATA

telecommunications services in Nebraska. Subsequently other competitors, including the applicant, were authorized to provide interLATA service. In granting these applications the Commission recognized that interLATA competition was in the public interest because it encourages services which are more responsive to consumer needs, are provided in a more efficient manner, are made available at a lower cost and are more technologically advanced. Having committed ourselves to a pro-competitive stance with respect to one portion of the interexchange market, the Commission is of the opinion that the benefits of competition should be extended to the rest of that market. There is no logical, legal or practical reason to limit such benefits to the users of telecommunications services which cross LATA boundaries.

14. LATA boundaries were created in the MFJ entered by Judge Greene in United States v. American Telephone & Telegraph Company, supra, as a means of delineating the areas within which the Bell Operating Companies were allowed to provide telephone service. As such, LATA boundaries are merely lines on a map without either actual or perceived relevance to the consumer of telecommunications services. There is no valid reason for this Commission to adopt a policy which allows the public a choice of interexchange carriers for calls between Lincoln and Omaha, which are in different LATAs, but which does not allow such choice for calls between, e.g., Omaha and Fremont or Lincoln and Hastings simply because the latter pairs of cities are each located in the same LATA.

15. Subpart (1) of Section 75-604 refers to "reasonably adequate telephone service." The determination of what constitutes reasonably adequate telephone service is a factual conclusion to be made by this Commission based on the facts and circumstances accompanying each case. It is the opinion of the Commission that the proper interpretation of this standard, when considered in light of today's advanced and evolving technology in telecommunications, should involve more than an examination of the mere technical adequacy of the services the monopoly carrier in a given market chooses to offer. Accordingly, we believe that examination under Section 75-604 should include whether or not an array of service provider choices is technologically and economically feasible. If they are, and if the only reason for allowing such choices to exist in certain geographic areas but not in others is to protect the monopoly position of the sole service provider in the noncompetitive area, then we believe that the public is not receiving reasonably adequate telephone service.

16. There is no doubt that it is both technologically and economically feasible for competition to exist among providers of interexchange telecommunications services in the intraLATA market. Applicant already has facilities in place with which it could provide intraLATA service. Applicant does not propose the construction of any new or duplicative facilities just to provide intraLATA interexchange service. The network now used to complete interstate and interLATA calls can and will be used to render intraLATA service. The fact that facilities are already

in place through which intraLATA services can be rendered demonstrates that competition among the providers of such services is technologically and economically feasible.

17. There is no evidence in the record that establishes a valid basis for drawing the line between competitive and noncompetitive telecommunications services at the LATA boundaries. An arbitrary preservation of an unnecessary monopoly for intraLATA calls will not serve the interests of the public. If a telephone user may select from a variety of providers for his calls between Omaha and Lincoln, an interLATA market, yet is confined to the use of one provider for a call between Hastings and Lincoln, an intraLATA market, then the service provided in the intraLATA market is not reasonably adequate in an economic sense. We therefore conclude that the territory within which the applicant proposes to offer interexchange service, i.e., the Nebraska intrastate intraLATA market, is not receiving reasonably adequate telephone service. Having made such determination, it is unnecessary to consider the other two criteria contained in Section 75-604.

18. The application should be granted in part and Ideal-Z-Tel should be authorized to offer interexchange telecommunications service in Nebraska; however, the offering of a flat rate unlimited calling service should be denied.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-694 be and it is hereby granted in part and Ideal-Z-Tel be and it is hereby authorized to provide interexchange telecommunications service within the State of Nebraska.

IT IS FURTHER ORDERED that authority to provide interLATA service shall be effective ten days from the date of this order, and intraLATA service shall be effective July 1, 1987.

IT IS FURTHER ORDERED that the offering of a flat rate unlimited calling service be and it is hereby denied.

IT IS FURTHER ORDERED that applicant notify its customers that Z-Tel I service is not available for intrastate calling in Nebraska and be responsible for insuring that its dealers so notify customers.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of April, 1987.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Duane D. Gay
//s//James F. Munnelly
//s//Eric Rasmussen
//s//Harold D. Simpson
//s//Daniel G. Urwiller

Eric Rasmussen
Chairman

ATTEST:

John Burman

Acting Executive Secretary